(1) Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

HERBERT C. OAKES, Judgment Creditor, and
BETTY O. MUKA, Assignee of Judgment,
(NEVER PLAINTIFFS BELOW)
Judgment Creditors/Petitioners,

v.

HORIZON FINANCIAL CORPORATION and MICHAEL D. HACKNEY, as President and/or agent of Horizon Financial Corporation and as a private individual,
(NEVER DEFENDANTS BELOW)
Judgment Debtors/Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Herbert C. Oakes pro se and
Betty O. Muka pro se, Petitioners
113 Kay St.
Ithaca, N. Y. 14850
(607) 257-2016

10 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does the United States Constitution (Arts. III, Sec. 2(1) and Art. VI, Secs. 2 and 3, read together) prohibit each and every federal court (and judge) from having subject matter jurisdiction and personal jurisdiction to grant relief to one entity and against another entity, when no federal question has been pleaded in a complaint, and no complaint naming either of those entities as a party has ever been filed in that court, and the clerk of that court has never issued process, and no summons or complaint has ever been served upon either of those entities?

2. Under Constitutional and statutory and rule constraints, is it ever possible for a Federal District Court to have subject matter jurisdiction and personal jurisdiction over anything, if a plenary action has never been commenced in that court?

3. Can a Federal District Judge create subject matter jurisdiction in his court by rendering an order "dismissing this action" when no action has been commenced in that court?

4. Does a Federal District Judge have subject matter jurisdiction to make an order awarding attorneys fees and costs to persons who have never been a party to a plenary action in that court?

5. While a federal trial court in the first state, and its appellate court, have jurisdiction over the parties and the subject matter, and have the power and the authority to grant a stay of enforcement of the judgment of that trial court pursuant to Fed. R. Civ. P. Rule 62 and Fed. R. Appel. P. Rule 8, only upon the posting of a supersedeas bond to cover the judgment and costs, does a Federal District Judge in the second state have subject matter jurisdiction and personal jurisdiction over the Judgment Creditors and Judgment Debtors to make an order staying the enforcement of that judgment without any supersedeas bond being posted in any federal court, and without a plenary action having been commenced in that federal court in the second state?

6. Can a "federal question" be raised for adjudication in a motion in a court where no plenary action has been commenced?

7. Is it necessary in federal courts to raise a "federal question" by pleading it sufficiently in fact and law in a complaint filed with the clerk to start a plenary action?

8. Does it violate Constitutional Due Process of Law for a federal district judge to decide a "federal question" that has not been pleaded in any complaint filed in that court, and when there has been no opportunity for the person adversely affected to be served with any complaint or to plead defenses or denials or to move against the complaint for sufficiency, etc?

9. If a judgment debtor has not taken advantage of his Fed. R. Civ. P. Rule 62 right to post a supersedeas bond with the trial court and to thereby obtain a stay of enforcement of the judgment against him, does a judge of coordinate jurisdiction in another state have subject matter jurisdiction and personal jurisdiction over the Judgment Creditor and Judgment Debtors or any authority to issue an order staying enforcement of that enforceable judgment without any supersedeas bond ever being posted in any court?

10. If a Judgment Creditor registers a federal court judgment in a federal court in another district, and the Judgment Debtor thinks that it has been prematurely and/or erroneously registered, is it possible for the Judgment Debtor to commence an action in the registering court by pleading such facts in a complaint filed in the registering court and thus to have it adjudicated as a "federal question" so as to give that court subject matter jurisdiction under Title 28 U.S.C. Sec. 1331 to vacate the registration in that registering court?

11. If a Judgment Creditor does commence an action in a federal court in a district other than the district of the rendering court, for the purpose of enforcing a judgment of the rendering court, and no Fed. R. Civ. P. Rule 62(b) or (d) or Fed. R. Appel. P. Rule 8 supersedeas bond has been filed in the rendering court or its appellate court, and those courts have never issued any stay of enforcement, is it unauthorized for the second court to "vacate registration" and/or to "stay enforcement" and/or to "quash writs" of execution and garnishment on the excuse

that Title 28 U.S.C. Sec. 1963 has not been complied with?

12. Is Title 28 U.S.C. Sec. 1963 unconstitutional on its face and as applied, because it discriminates against a Judgment Creditor who may only enforce his judgment in another district from the trial court's distsrict, since the statute requires the judgment to be "final by appeal or expiration of the time to appeal" before it can be registered in another district for enforcement purposes, whereas other Judgment Creditors can immediately enforce their judgment in the district where the judgment has been rendered?

13. In order to preserve the constitutional nature of Title 28 U.S.C. Sec. 1963, is it not necessary to interpret it so that it must be applied in pari materia with Fed. R. Civ. P. Rule 62 and Fed. R. Appel. P. Rule 8, so as to allow a judgment to be registered in another district if it has not been stayed by the trial court with the filing of a supersedeas bond, even if the judgment is not "final by appeal or by expiration of the time for appeal"?

14. Does a Judgment Creditor have a constitutional right to enforce the judgment of a Federal District Court after the Fed. R. Civ. P. Rule 62(a) automatic 10-day stay, if the Judgment Debtor has not filed the Fed. R. Civ. P. Rule 62(b) or (d) supersedeas bond and the judgment has not been stayed by the trial court or its appellate court under Fed. R. Appel. P. Rule 8, regardless of whether or not the judgment is "final by appeal or expiration of the time for appeal"?

15. Is it gross error and a fraud upon the public for the courts below to publish decisions in this matter referring to Herbert C. Oakes and/or Betty Muka as "Plaintiffs" when neither of them ever drafted a complaint or stated a cause of action or claim upon which relief can be granted or filed any such complaint or served a complaint or process upon anyone or commenced an action in the U.S. District Court below?

16. Is it gross error and a fraud upon the public for the courts below to publish decisions in this matter referring to Horizon Financial Corporation and Michael D. Hackney as "defendants" when no

complaint or process had ever been served upon them and they had never responded to any such non-existant complaint?

17. When the remanded issue is whether or not the U. S. District Court below had subject matter jurisdiction to make an order, is it gross error and a fraud upon the public for the courts below to publish decisions in this matter referring to this matter as an "action" and/or a "lawsuit" when no "action" or "lawsuit" was ever commenced in the U.S. District Court below?

18. When a remanded issue is whether or not the U.S. District Court below had personal jurisdiction to make an order, is it gross error and a fraud upon the public for the courts below to publish decisions in this matter referring to Herbert C. Oakes and/or Betty Muka as "plaintiffs," and referring to Horizon Financial Corporation and/or Michael D. Hackney as "defendants" when no complaint had ever been filed in the U.S. District Court below designating any parties as plaintiff or defendant, and no action had ever been commenced in the U.S. District Court below involving such persons?

19. When a remanded issue is whether or not the U.S. District Court below had subject matter jurisdiction to make an order, and memorandums of law and briefs have been furnished to the U.S. District Court and to the Court of Appeals below quoting Art. III, Secs. 1 and 2, and Art. VI, Secs. 2 and 3 of the United States Constitution and Title 28 U.S.C. Secs. 1331 and 1332 and 1343, etc., and Fed. R. Civ. Proc. Rules 1, 2, 3, 4, 4.1, 5, 6, 7, 8, 9, 10, 11, 12, etc., but none of the courts below has mentioned any of them with regard to whether the U.S. District Court below had subject matter jurisdiction to make the orders below, or whether the orders were "void ab initio," is it gross error and a fraud upon the public and a violation of a federal judge's oath of office under U.S. Const. Art. VI, Sec. 3 and Title 28 U.S.C. Sec. 453 to ignore such law and, instead to base their decision solely on one lower court case from a different circuit that did not even concern the procedural issue of actual subject matter jurisdiction?

20. When a person represents himself pro se, and no attorney represents him, is it gross error to award attorney's fees and

costs against him and in favor of others, for the purported and unspecified actions of a person who was not a named party or a named attorney and who did not appear in court and when no "action" had ever been commenced in that court and there were no "parties" and no hearing had ever been had in that court?

21. Does the United States Constitution (i.e. Art. I, Sec. 8(18)) authorize federal courts to grant to themselves "inherent jurisdiction" or "implied jurisdiction" in a matter over which they have no subject matter jurisdiction or personal jurisdiction in the first place?

22. When a federal judge ignores his or her oath to support the Constitution of the United States, and intentionally fabricates a decision that is directly contrary to the mandates of the United States Constitution (e.g. Art. I, Sec. 1 and/or Sec. 8(18), Art. III, Sec. 2(1), Art. IV, Sec. 2(1), or Art. VI, Sec. 2 and/or 3, etc.), could it constitute "bad behavior" under Art. III, Sec. 1 of the United States Constitution?

23. When a federal judge intentionally fabricates a decision that is directly contrary to the United States Constitution, could he or she be considered to be an "enemy" of the United States, within the meaning of Art. III, Sec. 3(1) of the United States Constitution?

24. When a federal judge intentionally fabricates a decision that is directly contrary to the United States Constitution, could he or she be subject to impeachment under Art. II, Sec. 4 of the United States Constitution?

25. When a federal judge intentionally fabricates a decision that is directly contrary to the United States Constitution, could he or she be subject to punishment by Congress for "treason" pursuant to Art. III, Sec. 3(2) of the United States Constitution?

26. Was Title 28 U.S.C. Sec. 1963 unconstitutionally applied by both courts below as a "jurisdiction-granting statute"?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED:

Since there was no plenary "action" commenced in the Florida District Court below, there were no "parties" stated in any complaint, and thus, there were no "parties" below, and no personal jurisdiction over anybody below.

In error, Herbert C. Oakes (the Texas Judgment Creditor) and Betty O. Muka (the 1998 assignee of Oakes' judgment, and thus a Texas Judgment Creditor) have been mischaracterized in all the captions of all courts below as "plaintiffs."

In error, Michael D. Hackney and Horizon Financial Corporation (the Texas Judgment Debtors) have been mischaracterized in all the captions of all courts below as "defendants."

CORPORATE DISCLOSURE STATEMENT

The Judgment Creditor petitioners herein are not corporations.

Judgment Debtor Horizon Financial Corporation has been dissolved for several years, according to Judgment Debtor Michael D. Hackney.

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TABLE OF CITED AUTHORITIES

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U.S. Constitution:	
Art. I, Sec. 1	9.,3,24,29
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17	Bender v. Williamsport Area School Dist., 1988, 106 S.Ct. 1326, 1331, 475 U.S. 534, 541, 89 L.Ed.2d 501)
20	Bowman v. White, C.A. 4th, 1968 388 F.2d 756

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18	Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 5 L.Ed. 257 (1821)
20	Dept. of Recreation & Sports of Puerto Rico v. World Boxing Association, C.A. 1st, 1991, 142 F.2d 84, 88
28	Dorey v. Dorey, 77 F.R.D. 721, 722 (N.D.Ala. 1978)
20	Georgiades v. Martin-Trigona, C.A.D.C. 1984, 729 F.2d 831, 834 n. 4.
21	Gilbert v. David, 1915, 35 S.Ct. 164, 235 U.S. 561, 59 L.Ed. 360
19	Hanford v. Davies, 1896, 16 S.Ct. 1051, 163 U.S. 273,41 L.Ed. 157

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21	Katz v. Goodyear Tire & Rubber Co., C.A.2d, 1984, 737 F.2d 238, 242 n. 2
20	Le Mieux Bros. v. Tremont Lumber Co., C.A. 5th, 1944, 140 F.2d 387.)"
18	Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803)
20	McNutt v. General Motors Acceptance Corp., 1936, 56 S.Ct. 780, 298 U.S. 178, 80 L.Ed. 1135
14,15, 16,21, 25,26	Ohio Hoist Manuf. Co. v. Li Rocchi, 490 F.2d 106 (6th Cir. 1974)
20	Roberts v. Lewis, 1892, 12 S.Ct. 781, 144 U.S. 653, 36 L.Ed. 579

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21 Seiderman v. Hamilton, C.A.3d, 1960, 275 F.2d 224, certiorari denied 80 S.Ct. 1258, 363 U.S. 820, 4 L.Ed.2d 1517),

20 Smith v. McCullough, 1926, 46 S.Ct. 338, 270 U.S. 456, 70 L.Ed. 682

21 Williamson v. Tucker, C.A. 5th, 1981, 645 F.2d 404, 412- 415

OTHER AUTHORITIES

18 "Constitutional Law" by William B. Lockhart et al, 1991 West Publishing Co., p. 1576 in Chapter 13 entitled "Limitations on Judicial Power"

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18,20 21,22	"Law of Federal Courts" by Charles Alan Wright, 1994
18	p. 27 under Chapter 2, "The Judicial Power of the United States."
22	p. 113 under Chapter 3 entitled "Federal Question."
20	p. 477-478 under Chapter 10, "Procedure in the District Courts."
21	p. 480 under Chapter 10, "Procedure in the District Courts."

APPENDIX A, B, and C COURT ORDERS
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10,29	pp. 1a-6a adopted and annexed the "Omnibus Order on Remand" of the court below,
2,10,16 20,31,29	which is pp. 6a-15a)
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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS

(unknown)

11th Cir. denial of rehearing is

11th Cir., 19__, ___F.2d ___)

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT:

The first district court order sought to be reviewed was entered below on 5/27/86 (see annexed Appendix C, pp. 18a-19a). (It was never entered as a "judgment" or "appealable order" pursuant to Fed. R. Civ. Proc. Rules 58 and 79(a).)

The second district court order sought to be reviewed was entered on 8/15/86, granting $2,000 attorney's fees and costs to "the defendants."

The third district court order sought to be reviewed was entered on 12/1/98, denying vacature of the 5/27/86 and 8/15/86 orders.

The fourth district court order sought to be reviewed was entered on 1/27/89, refusing reconsideration of the 12/1/98 order, on no stated facts or law.

The fifth district court order

sought to be reviewed was the "Omnibus Order on Remand" entered on 11/30/00, claiming that the district court had subject matter jurisdiction to make its order on 5/27/86 (see annexed Appendix A, pp. 6a-15a).

The 11th Circuit orders sought to be reviewed were the affirmance after remand, entered on 7/31/01 (see annexed Appendix A, pp. 1a-15a), and the denial of petitions for rehearing by panel and by the court en banc entered on 10/2/01 (see annexed Appendix B, pp. 16a-17a).

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the orders in question is Title 28 U.S.C. Sec. 1254.

RULE 29.4(b) STATEMENT

Since the constitutionality of Title 28 U.S.C. Sec. 1963 is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, this initial document filed in this Court hereby recites that Title 28 U.S.C. Sec. 2403(a) may apply, and that a copy of this petition will be served on the Solicitor General of

the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.E., Washington, D.C. 20530-0001.

It is unknown, but doubtful, that the Florida District Court below or the 11th Circuit Court of Appeals below, pursuant to Title 28 U.S.C. Sec. 2403(a), certified to the United States Attorney General the fact that the consitutionality of an Act of Congress (i.e. Title 28 U.S.C. Sec. 1963) was drawn into question.

LIST OF CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THE CASE, WHICH ARE SET OUT VERBATIM IN THE APPENDIX ANNEXED HERETO:

U.S. Constitution, Art. I, Secs. 1 and 8(18), Art. II, Sec. 4, Art. III, Secs. 1, 2(1) and 3(1) and (2), Art. IV, Sec. 2(1), Art. VI, Secs. 2 and 3.

U.S. statutes: Title 28 U.S.C. Secs. 451, 453, 1254, 1331, 1332, 1343, 1654,1918 1920, 1927, 1962, 1963, 2072, 2106, 2403(a)

Federal Rules of Civil Procedure: Rules 1, 2, 3, 4, 4.1, 5, 6, 7, 8, 9,10,11, 12, 16, 54, 58, 59, 60, 62, 65, 69, 79(a)

Federal Rules of Appellate Procedure: Rules 4 and 8.

CONCISE STATEMENT OF THE CASE SETTING OUT THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED:

The **NATURE OF THE CASE** was a Florida judgment enforcement. A case file was opened in the U.S. District Court for the Southern Division of Florida with the filing of a "Certificate of Judgment for Registration in Another Districtz" (See Record Vol. 1, Doc. #1) pursuant to 28 U.S.C. Sec. 1963, U.S. Const. Art. IV, Sec. 2(1), and Fed.Rules Civ.Proc. rule 69 (a), which registered a money judgment for enforcement as a judgment of the U.S. District Court for the Southern District of Florida.

The money judgment was in favor of Judgment Creditor Oakes and against both Judgment Debtors Horizon Financial Corporation and Michael D. Hackney (hereinafter both meant by "Hackney").

(No new independent "action" was commenced in that Florida court by the Judgment Creditor or Judgment Debtors.)

The **COURSE OF THE PROCEEDINGS** in Florida constituted the obstruction of enforcement. On 1/6/86 the Florida U.S. District Court issued a Writ of Execution

and 2 Writs of Garnishment, which were served by a Fed.Rules Civ.Proc. rule 4.1(a) specially appointed process server (Betty O. Muka) (See Record, Vol. 1, Docs. #2, #10 and #11), and bank accounts of both defendants with thousands of dollars in them were frozen and the garnishee bank filed its Answer to the Writ of Garnishment awaiting court order to pay such over. (See Record, Vol. 1, Soc. #7.)

In papers filed in other courts (including the Texas U.S. District Court that rendered the judgment) and served upon the Judgment Creditor (Oakes), the Judgment Debtors claimed to have made a motion in the Florida court to "vacate registration of foreign judgment, quash writs of execution and garnishment and to stay enforcement of judgment," but no such motion papers returnable in the Florida court were ever served upon the Judgment Creditor (Oakes). On 2/19/86 the Judgment Creditor (Oakes) filed an "Objection" to not being served (See Record, Vol. 1, Doc. #14), and also filed a Fed.Rules Civ.Proc. Rule 11 motion for sanctions for not serving such motion upon the Judgment Creditor (Oakes). (See Record, Vol. 1, Doc. #15) The Judg-

ment Debtors filed that Florida motion on 2/21/86 (See Record, Vol. 1, Doc. #16 and Vol. 2, Docs. #17, #22, #25 and #28) but never served such upon the Judgment Creditor (Oakes). On 3/16 86 the Judgment Creditor (Oakes) made a motion to strike the Judgment Debtor's motion because the papers had still not been served upon the Judgment Creditor (Oakes). (See Record, "Vol. 2, Docs. #20 and #21) Judge Kehoe ignored the Judgment Creditor (Oakes') motions and objections. The Judgment Creditor (Oakes) opposed the motion where papers served upon the Judgment Crediotr (Oakes) stated that it was actually returnable, in the Texas U.S. District Court, after which the Judgment Debtors withdrew the motion in Texas. The Judgment Creditor (Oakes) sent a copy of his papers opposing the Texas motion to the Florida court, adding the caption of the Florida court above the caption of the Texas court, not knowing whether or not the motion in the Florida court was the same as the motion in the Texas court, having still not been served with papers returnable in the Florida court. Nevertheless, on 5/27/86 Judge Kehoe issued his 5/27/86 order (Vol. 2, Doc. #29) entitled "ORDER GRANTING

MOTION TO VACATE, DISMISSING ACTION AND AWARDING REASONABLE ATTORNEY' FEES AND COSTS" and including in its content the words "ORDERD AND ADJUDGED that the Motion of the Defendants to Vacate Registration of Judgment from Another District, to Quash Writ of Execution and Writ of Garnishment and to Stay Enforcement of Judgment is GRANTED, and this case is DISMISSED. It is ORDERED AND ADJUDGED that the Defendants' request for recovery of costs and attorney's fees is GRANTED ... See Local Rule 16.", thus not only granting the unserved motion in its entirety, but granting other things that weren't even in the motion papers filed but not served (see annexed Appendix C, pp. 18a-19a). On 8/15/86 he awarded at- torney fees of $2,000 in an "action" that never existed, in favor of "defendants" when there were no "defendants" in his court. (See Record Vol. 2, Doc. #30.) The money frozen in the Judgment Debtors' bank accounts was ufrozen. The Judgment Credi- tor (Oakes) was thus permanently obstructed by Judge Kehoe from enforcing his judgment that was enforceable since 4/21/85.

On 7/16/98 the Judgment Creditor (Oakes) made a Fed.Rules Civ.Proc. rule 60

(b)(4), (5) and (6) motion to vacate Judge Kehoe's 5/26/86 order (See Record, Vol. 2, Doc. #31), but on 12/1/98 Judge Kehoe denied it on the sole ground that it was too late to make the motion. (See Record Vol. 2, Doc. #35.) On 12/13/98 Judge Kehoe died. On 12/30/98 a Notice of Appeal was filed (See Record, Vol. 2, Doc. #41.)

On 12/31/98 the Judgment Creditor (Oakes) filed an emergency motion to vacate Judge Kehoe's 12/1/98 order and for reconsideration of the motion that Judge Kehoe decided. (See Record, Vol. 2, Doc. #36) Judge Ungaro-Benages was assigned to the case, and on 1/27/98 she denied the emergency motion without making any statements of fact or law. (See Record Vol. 2, Doc. #43) On 2/8/99 an Amended Notice of Appeal was filed which included both the Ungaro-Benages and Kehoe orders as appealed from (See Record, Vol. 2, Doc. #45)

On 6/12/00 on appeal by Judgment Creditors Oakes and Muka (Assignee of the Judgment) the 11th Circuit affirmed Judge Kehoe's 12/1/98 order insofar as he found that the Judgment Creditors' Fed.Rules Civ.Proc. rule 60(b)(5) and (6) motion was untimely, but reversed and vacated the

12/1/98 order on Fed.Rules Civ.Proc. rule 60(b)(4) grounds, because it is never too late to challenge an order or judgment on grounds that the court lacked jurisdiction to make the order of judgment, and the 11th Circuit remanded the issue of lack of subject matter jurisdiction for Judge Kehoe to make the 5/27/85 order to be decided on its merits. (See Record, Vol. #3?, Doc. #47, the Mandate.)

On 7/21/00 a "status-conference" hearing was held under Judge Ungaro-Benages who allowed further briefing of the motion to vacate on grounds of lack of subject matter jurisdiction to issue the 5/27/86 order. (See Record Vol. 37, Docs. #55, #59 and #68, the transcript.) (See Record Vol. 3?, Docs. #49-#65 for submissions by both sides.) On 11/30/00 Judge Ungaro-Benages rendered her "Omnibus Order on Remand." (See Record Vol. 3?, Doc. #66.) (also see Appendix A, pp. 6a-15a annexed hereto). In it she denied the Judgment Creditor's Fed.Rules Civ.Proc. rule 60(b)(4) motion to vacate Judge Kehoe's order dated 5/27/86.

On 12/27/00 the Notice of Appeal was filed by Judgment Creditor Betty O. Muka

(Assignee of the Judgment) (See Record Vol. #3?, Doc. #67).

On 7/31/01 the Eleventh Circuit Court of Appeals affirmed and made the "Omnibus Order on Remand" a part of its decision (see Appendix A, pp. 1a-6a and 6a-15a). A "judgment" was also entered on 7/31/01.

On 10/2/01 the Eleventh Circuit Court of Appeals denied the Judgment Creditor's 8/26/01 combined Petition for Rehearing and Petition for Rehearing en banc.

On 11/14/01 the Judgment Creditor's 10/8/01 motion to stay the mandate pending petition for writ of certiorari was denied.

On 11/23/01 the 7/31/01 judgment was issued as a mandate.

STATEMENT OF THE FACTS

A diversity action was brought in the U.S. District Court for the Southern District of Texas, Houston Division. A jury verdict in open court on 4/4/85 awarded money damages in favor of plaintiff and against both defendants on the claims of fraud and breach of contract, and a written money judgment was filed on 4/11/85 (See Record, Vol. 1, Doc. #1). Both defendants left Texas right after the trial and left no property there.

They had property in Florida.

On 4/21/85 the Fed.Rules Civ.Proc. rule 62(a) 10-day automatic stay of enforcement expired, and Judgment Creditor Oakes believed that also expired was the Fed.Rules Civ.Proc. rule 59(b) time limit in which to file a motion for a new trial within 10 days of the judgment.

No Fed.Rules Civ.Proc. rule 62(b) or (d) mandatory supersedeas bond was ever filed and no motion for a "stay of enforcement" was made by the Judgment Debtors or granted in that Texas court.

On 4/22/85 a motion for a new trial was filed, and Judgment Crediditor Oakes believed that it was untimely.

On 5/11/85 the Fed.Rules App.Proc. rule 4(a)(1) 30-day time in which to file a Notice of Appeal expired. Judgment Creditor Oakes believed that Fed.Rules App.Proc. rule 4(a)(4)(E) did not apply. On 5/13/85 that Texas court clerk issued a Title 28 U.S.C. Sec. 1963 "Certificate of Judgment for Registration in Another District" using its standard form and filling out the blanks truthfully. (See Record, Vol. #1, Doc. #1.) Judgment Creditor Oakes pro se assumed and believed

that it was correct and proper.

On 10/2/85 the motion for a new trial was denied.

On 10/21/85 the "Certificate of Judgment for Registration in Another District" was filed in the U.S. District Court for the Southern District of Florida (See Record, Vol. 1, Doc. #1) for the purpose of enforcement of that Texas judgment as a registered Florida U.S. District Court judgment, pursuant to Title 28 U.S.C. Sec. 1963 and Fed.Rules Civ.Proc. rule 69(a) and U.S. Const., Art. IV, Sec. 2, clause 1.

On 10/25/85 a Notice of Appeal was filed in Texas. Judgment Creditor Oakes believed that it was untimely filed.

On 2/12/86 Texas Judge Hughes quashed the Texas 5/13/85 "Certificate of Judgment for Registration in Another District" upon motion of the Judgment Debtors.

On 2/27/86 the Judgment Debtors made a motion in Texas to withdraw their motion to vacate registration, quash writs of execution and garnishment and to stay enforcement - returnable in Texas. (That motion was never decided.)

On 5/27/86 Florida Judge Kehoe

vacated the registration in Florida, quashed writs of execution and garnishment and stayed enforcement, in addition to "dismissing action" and awarding attorney fees and costs to "defendants" - when there was no "action" ever commenced in that court, and no "defendants."

On 11/6/86 the Texas judgment was affirmed without a decision, after oral argument by both sides (including Judgment Creditor Oakes pro se and opposing counsel) before the 5th Circuit Court of Appeals. (There was no decision because the Judgment Debtors' attorneys appeal papers were so incredibly meritless and confused.)

On 3/18/87 Texas Judge Hughes vacated his 2/12/86 order which vacated the "Certificate of Judgment for Registration in Another District." **THIS LEFT THE "CERTIFICATE OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT" PURPORTEDLY BACK IN FORCE IN FLORIDA, WARRANTING VACATURE OF FLORIDA JUDGE KEHOE'S 5/27/86 VACATURE OF SUCH REGISTRATION.**

THERE WAS NO BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE (FLORIDA JUDGE KEHOE) BECAUSE NO "ACTION" WAS EVER

COMMENCED IN THAT COURT, AND THAT IS WHY JUDGE KEHOE'S 5/27/86 ORDER MUST BE VACATED NUNC PRO TUNC, BECAUSE IT WAS VOID AB INITO AND A NULLITY.

ARGUMENT

POINT I - THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HAS ENTERED A DECISION (DATED 7/31/01, SEE ANNEXED APPENDIX A, PP. 1a-15a) IN CONFLICT WITH THE DECISIONS OF ALL OTHER UNITED STATES COURTS OF APPEALS, AND IN CONFLICT WITH ALL DECISIONS OF THE UNITED STATES SUPREME COURT, ON THE SAME IMPORTANT MATTER, I.E. IT HELD THAT NO PLENARY ACTION MUST BE COMMENCED IN A UNITED STATES DISTRICT COURT FOR THAT COURT TO HAVE **SUBJECT MATTER JURISDICTION.**

No U.S. District Court and no Court of Appeals and no decision of the United States Supreme Court has ever held that no plenary action must be commenced in a United States District Court for that court to have subject matter jurisdiction.

The case that both courts below relied solely upon (Ohio Hoist Manuf. Co. v. Li Rocchi, 490 F.2d 106 (6th Cir. 1974)) never held that either! In Ohio Hoist the Judgment Debtor commenced an action in the

registration court and attempted to plead a "federal question" involving the premature Title 28 U.S.C. Sec. 1963 registration of a judgment that had been bonded and stayed by the Judgment Debtor pursuant to Fed.Rules Civ.Proc. Rule 60(d) in the rendering court and while the appeal had not yet been decided. While the U.S. District Court in Ohio Hoist dismissed the action pursuant to Fed. Rules Civ.Proc Rule 12(b)(1) and (6) for failure to state a claim upon which relief can be granted and thus lack of subject matter jurisdiction, it was reversed on appeal, with the ruling that pleading the premature registration of a judgment under Title 28 U.S.C. Sec. 1963 could constitute a "substantial federal question" over which a U.S. District Court could exercise subject matter jurisdiciton.

At bar, neither the Judgment Debtors nor the Judgment Creditor pleaded any "substantial federal question" in any complaint or filed any complaint or commenced any action in the U.S. District Court below, and because of that that court never had subject matter jurisdiction to decide an issue or to grant any relief whatsoever.

Both courts below erroneously took

language from the Ohio Hoist case out of context (see annexed Appendix A, pp. 5a-6a and 12a-13a) and failed to state the jurisdictional facts in that case and compare them with the jurisictional facts in this case, to distinguish the cases from each other on the basis of whether or not an "action" had been commenced at all in the registering court.

POINT II - THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH A DEPARTURE BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA BELOW, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER, I.E. IT ADOPTED AND ANNEXED THE LOWER COURT'S DECISION (DATED 11/30/00, SEE APPENDIX A, PP. 6a-15a) AS AN APPENDIX TO ITS OWN DECISION (DATED 7/31/01, SEE ANNEXED APPENDIX A, pp. 1a- 15a) IN WHICH BOTH COURTS HELD THAT NO PLENARY ACTION MUST BE COMMENCED IN A UNITED STATES DISTRICT COURT FOR THAT COURT TO HAVE SUBJECT MATTER JURISDICTION. FURTHERMORE, THE ENTIRE ELEVENTH CIRCUIT COURT OF APPEALS EN BANC FAILED AND REFUSED TO COR-

RECT THE CONSTITUTIONAL JURISDICTIONAL ERROR WHEN PROVIDED WITH A PETITION FOR REHEARING EN BANC (SEE ANNEXED APPENDIX B, PP. 16a-17a), AND THIS FURTHER CALLS FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

An act committed by a federal court without subject matter jurisdiction is a nullity, and both courts below and all of their justices involved had a constitutional duty to declare the 5/27/86 order of Judge Kehoe "void ab initio."

The U.S. Constitution makes it clear that federal courts are courts of limited juridiction, and are not like state courts of general original jurisdiction. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..." (U.S. Const., Art. III, Sec. 2). Thus, the subject matter must "arise under the U.S. Constitution and laws." And it must arise in a "case." "They are empowered to hear only such cases as are within the judicial power of the United States, as defined in the Constitution, and have been entrusted to them by a jurisdictional grant by Congress. (Bender v. Williamsport Area School Dist., 1988, 106 S.Ct. 1326, 1331, 475 U.S.

534, 541, 89 L.Ed.2d 501)" (Law of Federal Courts" by Charles Alan Wright, 1994, p. 27 under Chapter 2, "The Judicial Power of the United States.") In the court below there never was a "case," and there never was any subject matter jurisdiction.

"By the express terms of the Constitution, the exercise of the judicial power is limited to 'cases' and 'controversies.' In Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803) and Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 5 L.Ed. 257 (1821), Chief Justice Marshall ... said: 'The article does not extend the judicial power to every violation of the Constitution which may possibly take place, but to 'a case in law or equity' in which a right under such law is asserted in a court of justice. If that question cannot be brought into a court, then there is no case in law or equity, and no jurisdiction is given by the words of the article.'" ("Constitutional Law" by William B. Lockhart et al, 1991 West Publishing Co., p. 1576 in Chapter 13 entitled "Limitations on Judicial Power"). Thus, in the court below, there never was any subject matter jurisdiction to grant relief on a "motion" where no "case" was

ever commenced in that court.

Thus, it has been well established for over 200 years that a federal judge cannot act unless an "action" has actually been commenced in his court by following the required procedures of filing a complaint with the clerk, having a summons issued, having the summons and complaint served upon the defendant, pleading the "substantial federal question" sufficiently in fact and law, etc. (Fed.Rules Civ. Proc. rules 1, 3, 4, 7, 8, 9, 10, 12(b)(1), (2), (3), (4), and (6), etc.) None of that happened below, and the court never had any subject matter jurisdiction.

"Rule 8(a)(1) requires that a pleading setting forth a claim for relief contain a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it. The reason for the rule is clear. The federal courts are courts of limited jurisdiction. There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown. (Hanford v. Davies, 1896, 16 S.Ct. 1051, 163 U.S. 273,

41 L.Ed. 157, Smith v. McCullough, 1926, 46 S.Ct. 338, 270 U.S. 456, 70 L.Ed. 682: Bowman v. White, C.A. 4th, 1968 388 F.2d 756; Le Mieux Bros. v. Tremont Lumber Co., C.A. 5th, 1944, 140 F.2d 387.)" ("Law of Federal Courts" by Charles Alan Wright, 1994, p. 477-478 under Chapter 10, "Procedure in the District Courts.") In the court below there was no complaint filed, and no statement of jurisdiction in the non-existant complaint and non-existant "action." And the courts below grossly erroneously "presumed" jurisdiction by characterizing it as "implied" and "inherent" (see Appendix A, p. 12a - adopted by both courts below). "If the jurisdictional allegations are challenged, they must be proved (Roberts v. Lewis, 1892, 12 S.Ct. 781, 144 U.S. 653, 36 L.Ed. 579), and the party invoking federal jurisdiction has the burden of proof (McNutt v. General Motors Acceptance Corp., 1936, 56 S.Ct. 780, 298 U.S. 178, 80 L.Ed. 1135, Dept. of Recreation & Sports of Puerto Rico v. World Boxing Association, C.A. 1st, 1991, 142 F.2d 84, 88: Georgiades v. Martin-Trigona, C.A.D.C. 1984, 729 F.2d 831, 834 n. 4.). Where there is such a challenge, the court has discretion either

to decide the question itself or to submit it to a jury (Gilbert v. David, 1915, 35 S.Ct. 164, 235 U.S. 561, 59 L.Ed. 360; Katz v. Goodyear Tire & Rubber Co., C.A.2d, 1984, 737 F.2d 238, 242 n. 2; Williamson v. Tucker, C.A. 5th, 1981, 645 F.2d 404, 412-415; Seiderman v. Hamilton, C.A.3d, 1960, 275 F.2d 224, certiorari denied 80 S.Ct. 1258, 363 U.S. 820, 4 L.Ed.2d 1517), though ordinarily the court will determine the jurisdictional facts itself." ("Law of Federal Courts" by Charles Alan Wright, 1994, p. 480 under Chapter 10, "Procedure in the District Courts.")

In the court below, upon remand to determine the jurisdictional question, the Judgment Creditors requested a trial with an opportunity for the presentment of evidence and cross-examination of witnesses, but the court below ignored the request, and, although it found that no plenary action had been commenced in that court (see Appendix A, p. 12a), it ruled, in gross unconstitutional and unlawful error, that no plenary action was needed to be commenced in order for it to have jurisdiction over an arguably federal question (relying, in error, solely upon the Ohio Hoist case in

which an action was actually commenced and a claim pleaded, which distinguished it from the facts at bar).

Proof that no "action" had been commenced in the court at bar, existed on the court docket, where no complaint was listed as the first document filed. At the hearing held on remand, Judgment Creditor Muka interrupted the court at the beginning to state that the proceedings could be brief because of the fact that no "action" had been commmenced in that court, and that was the only fact necessary to know that that court never had any subject matter jurisdiction. Judge Ungaro-Benages ignored the controlling proof, and fabricated an unconstitutional decision in bad faith, for the purpose of aiding the Judgment Debtors and injuring the Judgment Creditors.

"It has been seen that the federal question must appear in the complaint. A corollary rule is that federal jurisdiction exists if the complaint states a case arising under federal law ..." ("Law of Federal Court" by Charles Alan Wright, 1994, p. 113 under Chapter 3 entitled "Federal Question.")

When no complaint prior to it has

been filed, a motion requesting relief of some kind is insufficient as a matter of law. The request for relief must be at the conclusion of a complaint filed with the clerk. (Fed.Rules Civ.Proc. rules 7(a), 8(a), and 10)

The court below should have denied the Judgment Debtors' first motion on grounds that it lacked actual jurisdiction over the subject of the motion, because no "action" had been commenced with a pleading that stated a "federal question" and the relief sought.

Even if the court didn't deny the motion on those grounds, the order issued was a nullity ab initio. An order made by a court without actual subject matter jurisdiction and/or without actual personal jurisdiction is a nullity ab initio.

The United States Supreme Court should declare the 5/27/86 order below to be void ab initio for lack of subject matter jurisdiction, and vacate it nunc pro tunc.

POINT III - BOTH THE ELEVENTH CIRCUIT COURT OF APPEALS AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA BELOW DEMONSTRATED A COMPLETE IGNORANCE OF

EVERY PROVISION OF THE UNITED STATES CONSTITUTION AND FEDERAL STATUTES AND FEDERAL RULES OF CIVIL PROCEDURE WHICH PERTAIN TO SUBJECT MATTER JURISDICTION AND PERSONAL JURISDICTION AND CONSTITUTIONAL DUE PROCESS OF LAW, I.E. NOT A SINGLE ONE WAS MENTIONED IN ANY OF THEIR DECISIONS, NOTWITHSTANDING THE FACT THAT THEY WERE PROVIDED WITH VERBATIM QUOTATIONS OF ALL OF THEM IN BRIEFS SUBMITTED TO THEM (INCLUDING:

THE UNITED STATES CONSTITUTION, Art. I, Secs. 1 and 8(18), Art. II, Sec. 4, Art. III, Secs. 1, 2(1) and 3(1) and (2), Art. IV, Sec. 2(1), and Art. VI, Secs. 2 and 3.

U.S. statutes: Title 28 U.S.C. Secs. 451, 453, 1254, 1331, 1332, 1343, 1654, 1918, 1920, 1927, 1962, 1963, 2072, and 2106.

Federal Rules of Civil Procedure: Rules 1, 3, 4, 4.1, 5, 6, 7, 8, 9, 10, 11, 12, 16, 54, 58, 59, 60, 62, 65, 69, and 79.

Federal Rules of Appellate Procedure: Rules 4 and 8.)

POINT IV - BOTH THE ELEVENTH CIRCUIT COURT OF APPEALS AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

BELOW DEMONSTRATED A COMPLETE INABILITY TO UNDERSTAND WHAT CASE LAW IS APPLICABLE AND HOW TO DISTINGUISH CASE LAW JURISDICTIONAL FACTS FROM THE JURISDICTIONAL FACTS AT BAR.

Both courts below did not rely upon or cite any United States Supreme Court Case, or any Eleventh Circuit Court of Appeals case (except the proper one relied upon to remand the case to decide the Jurisdictional question), or any Florida District Court case, or any case in which no "action" was commenced, as at bar.

Instead, they relied solely upon one case (Ohio Hoist), a non-controlling and inapplicable 6th Circuit case, in which a judgment debtor had brought a new "action" in the United States District Court by filing a complaint which attempted to state a "federal question" about a premature filing of a "Certificate of Judgment for Registration in Another District" before the appeal from the judgment was decided, and while a Fed.Rules Civ.Proc. rule 60(d) supersedeas bond had been filed and a stay of enforcement ordered by the trial court.

Ohio Hoist was distinguished from the case at bar by the fact that an "action" had been commenced in the Ohio Hoist

case, but no "action" had been commenced at bar. It is the commencement of an "action" that gives a Federal Court subject matter jurisdiction, as long as a "substantial federal question" is pleaded in the complaint filed with the court.

Ohio Hoist did not hold that no pleading was necessary or that no plenary action was necessary to commence in order for a United States District Court to have subject matter jurisdiction - which both courts below erroneously and outrageously held and which this court needs to reverse.

POINT V - ALL FEDERAL JUDGES ARE REQUIRED TO TAKE AN OATH OF OFFICE TO SUPPORT THE UNITED STATES CONSTITUTION (U.S. CONST. Art. VI, SEC. 2), AND IT IS BINDING UPON THEM IN REGARD TO THEIR OFFICIAL DUTIES (ART. VI, SEC. 2), AND WHEN THEY COMPLY WITH THEIR OATH THEY ARE ON "GOOD BEHAVIOR" (Art. III, Sec. 1), BUT IF THEY ALLOW UNCONSTITUITONAL DECISIONS TO GO UNCORRECTED, THEY ARE NOT ON "GOOD BEHAVIOR" (Art. III, Sec. 1) AND THEY ARE AN "ENEMY" OF THE UNITED STATES CONSTITUTION AND THE COUNTRY AND ITS CITIZENS (Art. III, Sec. 3(1)), AND ARE SUBJECT TO IMPEACHMENT AND REMOVAL FROM OF-

FICE (Art. II, Sec. 4) AND PUNISHMENT FOR TREASON (Art. III, Sec. 3(2)), SO THIS COURT SHOULD NOT ALLOW THE TOTALLY OUTRAGEOUS UNCONSTITUIONAL DECISIONS BELOW TO DESTROY THE CONSTITUTION AND OUR FEDERAL JUDICIAL SYSTEM AND OUR COUNTRY.

POINT VI - TITLE 28 U.S.C. SEC. 1963 WAS ALREADY UNCONSTITUTIONAL ON ITS FACE, BUT BOTH COURTS BELOW ADDITIONALLY UNCONSTITUIONALLY APPLIED IT AT BAR IN TWO WAYS.

Judgment Creditors are able to enforce their money judgments after the Fed. Rules Civ.Proc rule 62(a) 10-day automatic stay has expired, and if no Fed.Rules Civ. Proc rule 62(b) or (d) stay of enforcement has been granted by the trial court or its appellate court, only if they enforce them in the district where the trial court sits.

However, Title 28 U.S.C. Sec. 1963 prohibits a Judgment Creditor from registering his judgment and enforcing it under the same circumstances but in another district. This violates United States Constitution, Art. IV, Sec. 2(1) which states that "The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Enfor-

cing a judgment is a "privilege" that should exist in every state at the same time. (Dorey v. Dorey, 77 F.R.D. 721, 722 (N.D.Ala. 1978) In Dorey v. Dorey a trial judge deliberately issued a "Certificate of Judgment for Registration in Another District" when no supersedeas bond had been filed and the appeal had not been decided, notwithstanding the limitations of Title 28 U.S.C. Sec. 1963, holding that Sec. 1963 was unconstitutional unless it was applied in pari materia with Fed.Rules Civ.Proc. rule 62, so that a judgment could be registered in any other district if no supersedeas bond had been filed and no stay of enforcement issued by the trial court or its appellate court (Fed.Rules Appel.Proc. rule 8).

The Judgment Creditor at bar found the Dorey v. Dorey case in the Federal Rules Decisions, and believed that he had a constitutional right to register his unstayed Texas judgment in the Florida U.S. District Court, notwithstanding the unconstitutional limitation in Title 28 U.S.C. Sec. 1963 that it could not be done until the judgment was "final by appeal or expiration of the time for appeal."

Furthermore, both courts below unconstitutionally applied Title 28 U.S.C. Sec. 1963 by characterizing that procedural statute (codified under Title 28 U.S.C. in Part 5 entitled "Procedure") as a "jurisdiction-granting statute" when it is not codified under Title 28 U.S.C. in Part 4 entitled "Jurisdiction and Venue" where the chief jurisdictional statutes, e.g. Title 28 U.S.C. Secs. 1331 and 1332 and 1343, appear. Both courts below grossly erroneously and unconstitutionally characterized Title 28 U.S.C. Sec. 1963 as granting "inherent jurisdiction" and "implied authority" (see Appendix A, pp. 5a-6a and 12a-13a) to decide a "federal question" when no plenary action has ever been commenced in that court.

The United States Constitution (Art. I, Secs. 1 and 8(18)) grant to Congress all legislative powers to enact laws which shall be necessary and proper for carrying into Execution its powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. The Constitution does not grant the courts any legislative power to enact laws,

Art. III, Sec. 2 of the United States Constitution states inter alia: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States ..." - That means laws enacted by Congress, not case law.

The decisions at bar by both levels of courts below were unconstitutional attempts to grant to all federal courts jurisdictional powers that neither the Constituion nor Congress nor any U.S. statute has ever granted to the courts, i.e. jurisdiction to make orders granting relief without any plenary action or case ever existing in such courts.

If the decisions in the matter at bar are not reversed by this court, there will be a ground-swell of unconstitutional cases preventing all judgment creditors from enforcing their judgments all over the United States, and unleashing unconstrained federal judges upon the helpless populace.

CONCLUSION

Petitioners respectfully request that this Petition for a Writ of Certiorari be granted.

Dated: 12/31/01 Betty O. Muka, Herbert C. Oakes

Betty O. Muka and Herbert C. Oakes

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-10025

Non-Argument Calendar

D.C. Docket No. 85-03361-CV-UUB

HERBERT C. OAKES,
Judgment Creditor, and
BETTY O. MUKA,
Assignee of Judgment,
Plaintiffs-Appellants,

v.

HORIZON FINANCIAL, S.A.,
Horizon Financial Corporation,
MICHAEL D. HACKNEY, Michael D.
Hackney, as President and/or agent
of Horizon Financial Corporation
and as a private individual.
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

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(July 31, 2001)

Before EDMONDSON, WILSON and FAY, Circuit Judges.

PER CURIAM:

Herbert C. Oakes and Betty O. Muka ("Oakes") appeal the district court's denial of their pro se motion for relief from a 1986 judgment pursuant to Fed.R.Civ. P. 60(b). On appeal, Oakes and Muka argue that the distsrict court erred by denying the Rule 60(b)(4) motion because the district court's 1986 order vacating the registration of a foreign judgment was void as the court lacked subject matter jurisdiction. They contend that a judicial action was never commenced because a complaint was never filed, and, therefore, there was no pleading properly before the court on which to rule. We disagree and affirm.

This case arises from the denial of Oakes' Fed.R.Civ.P. 60(b) motion to vacate a twelve-year-old order. The following are the facts leading up to the Rule 60(b) motion. In a federal district court in Texas, Oakes had obtained a money judgment against Horizon Financial Corporation and its President, Michael D. Hackney. In 1985, Oakes registered that judgment under 28 U.S.C. Sec. 1963 with the federal

district court in Florida by filing a certificate from the Texas district court verifying that the judgment was final. The Florida district court issued writs of garnishment under which Oakes could enforce the judgment.

The defendants moved the federal district court in Florida to vacate the registration of the judgment, quash the writs, and stay any further enforcement of the judgment, arguing that the judgment was not final because, at the time of the certification, they had a pending motion for a new trial in the Texas district court and a notice of appeal in the Fifth U.S. Circuit Court of Appeals. In 1986, the federal district court in Florida granted the defendants' motion to vacate the registration, quash the writs, and stay enforcement of the judgment, based on the Texas court having quashed the registration certificate. There was no appeal.

Twelve years later, in 1998, Oakes filed the current Rule 60(b) motion in a federal district court in Florida, requesting the court to vacate its previous 1986 order that granted the defendants' motion to vacate the registration and quash

the writs of garnishment. Oakes argued, among other things, that the Texas court order quashing the certificate and the Florida court order vacating the registration were void because they were based on the defendants filing an untimely motion for a new trial and notice of appeal.

The defendants opposed the motion, arguing, among other things, that Oakes was bringing this motion 12 years after the order was issued. Oakes replied by conceding that the motion for a new trial and notice of appeal were not untimely, and withdrew those arguments. Oakes still maintained, however, that the federal district court in Florida acted without jurisdiction by imposing a stay on enforcing the judgment. Oakes contended that the judgment was thus void as "fraudulent" and "jurisdictionless" under either Rule 60(b)(4), (5), or (6), which allow a reasonable time limit.

The federal district court in Florida did not address arguments individually, but dismissed Oakes' Rule 60(b) motion, finding that under no interpretation of the law could twelve years between the issuance of the original order and the Rule 60(b)

motion be a reasonable time within which to bring the motion. The district court summarily denied Oakes' motion for reconsideration. Oakes appealed.

Because a jurisdictional defect may be challenged at any time, this Court reversed and remanded to the district court to rule on Oakes' Rule 60(b)(4) claim. On remand, the distsrict court again denied Oakes' Rule 60(b)(4) motion, finding that where a foreign judgment has been registered in violation of 28 U.S.C. Sec. 1963, the district court where the judgment is registered has subject matter jurisdiction to annul or vacate it. Thus, the court concluded that Oakes failed to demonstrate entitlement to relief under Rule 60(b) as the district court had subject matter jurisdiction in 1986 to vacate the registration of the judgment. This appeal followed.

On November 30, 2000, the district court entered an Omnibus Order on Remand (see footnote 1) which recounts the history of this matter and the legal issue surrounding jurisdiction. We adopt the discussion labeled Legal Analysis and agree with the Sixth Circuit's holding and conclusions as expressed in Ohio Hoist Manuf.

Co. v. Li Rocchi, 490 F.2d 105 (6th Cir. 1974). A substantial federal question is presented, and thus federal jurisdiction exists, where a foreign judgment has been registered in violation of 28 U.S.C. Sec. 1963.

AFFIRMED.

(Footnote 1 - A copy is attached as an appendix.)

(Footnote 1's APPENDIX)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 85-3361-CIV-UNGARO-BENAGES

HERBERT C. OAKES,
Plainiff,
v.
HORIZON FINANCIAL CORP. and
MICHAEL D. HACKNEY,
Defendants.

OMNIBUS ORDER ON REMAND

THIS CAUSE is before the Court upon Mandate of the Eleventh Circuit Court of Appeals entered on June 12, 2000, the

parties' briefing on Muka's Motion to Vacate the May 27, 1986 Order, and Motion of Judgment Creditor Muka for the Court to Accept 10/18/2000 Counter-Reply Memorandum of Law on the Pending Motion to Vacate, received in Chambers on or about October 19, 2000.

THE COURT has considered the Mandate, the parties' briefing, the pertinent portions of the record and is otherwise fully advised in the premises. By Mandate entered June 12, 2000, the Eleventh Circuit Court of Appeals affirmed in part and reversed and remanded in part the late Honorable James W. Kehoe's December 1, 1998 Order denying Judgment Assignee Betty Muka's ("Muka") Motion to Vacate Order Dated 5/27/86. Specifically, the Eleventh Circuit reversed and remanded that portion of the December 1st Order which denied Muka's motion to vacate under Rule 60(b)(4) Judge Kehoe's May 27, 1986 Order vacating the registration of a foreign judgment. The Eleventh Circuit directed this Court to consider Muka's arguments in this regard on the merits. By Order dated August 7, 2000, the undersigned set a briefing schedule on this issue. Upon careful consideration of

the parties' memoranda and the relevant case law and for the reasons discussed below, the Court finds that Muka's contention that subject matter jurisdiction to vacate the foreign registration was lacking or that the May 27, 1986 Order was otherwise defective under Rule 60(b)(4) is without merit.

PROCEDURAL BACKGROUND

This action stems from an April 11, 1985 judgment entered in favor of Herbert Oakes ("Oakes") against Micahel D. Hackney ("Hackney") and Horizon Financial Corporation by the United States District Court for the Southern District of Texas (the "Texas Judgment"). (See footnote 1) Four days before Hackney filed his Notice of Appeal to the Fifth Circuit Court of Appeals and over a year before the Fifth Circuit affirmed the Texas Judgment, on October 21, 1985, Oakes filed papers in this Court to effect registration of the Texas Judgment and obtained writs of

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Footnote 1 - At the July 21, 2000 Planning and Scheduling Conference, the parties represented that Horizon Financial Corporation has been dissolved.

garnishment to enforce the judgment. (See footnote 2)

Arguing that the Texas Judgment was still on appeal and not yet final, on February 21, 1986, Hackney filed a motion to vacate the registration, quash the writs and stay enforcement of the Texas Judgment until resolution of the appeal. Additionally, Hackney's motion sought attorney's fees and costs for Muka's improper participation in the registration proceeding after being suspended from the practice of law.

Noting that the Southern District of Texas had quashed its certification of the Texas Judgment for registration in another district, Judge Kehoe granted Hackney's motion to vacate the registration and dismissed the action by Order dated May 27, 1986 (the "1986 Order"). (See footnote #3.)

Footnote 2 - At some point during the pendencey of this case, Oakes assigned the Texas Judgment to Muka, has sister.

Footnote 3 - Judge Kehoe also granted the motion to vacate the registration to the extent it sought attorney's fees and costs.

The next record action did not occur until twelve years later when, on July 16, 1998, Muka file (sic) a motion to vacate the 1986 Order under Rule 60(b)(1)-(6). By Order dated December 1, 1998, Judge Kehoe denied the motion based on its untimeliness as well as principles of res judicata and collateral estoppel. On December 31, 1998, Muka filed a motion for reconsideration which this Court denied by Order dated January 27, 1999.

Muka appealed Judge Kehoe's December 1st Order and the undersigned's January 27th Order. The Eleventh Circuit reversed and remanded only those portions of the Orders regarding denial of relief under Rule 60(b)(4) for reconsideration of Muka's arguments in this regard on the merits.

LEGAL ANALYSIS

Rule 60(b)(4) of the Federal Rules of Civil Procedure provides that a court may relieve a party from an order or final judgment that is void. A judgment is "void" under Rule 60(b)(4) if it was rendered without jurisdiction of the subject matter or the parties or in a manner inconsistent with due process of law. See, e.g., United States v. Bock

Oldsmobile, Inc., 909 F.2d 657, 661-62 (1st Cir. 1990)(explaining that the concept of void judgments must be narrowly construed to comport with the interests of finality). Muka contends that the 1986 Order is void because it was rendered in violation of due process of law and because subject matter jurisdiction to vacate the registration of the Texas Judgment was lacking. (See footnote #4.)

First, Muka argues that the 1986 Order was rendered in violation of due process because Oakes did not have notice of the motion to vacate the registration of the Texas Judgment. See Blaney v. West, 209 F.3d 1027, 1031 (7th Cir. 2000). Muka's assertion is belied by the record.

Footnote 4 - Muka also states throughout her opposition memorandum that personal jurisdiction was lacking. Other than her conclusory assertions, however, Muka fails to explain how Judge Kehoe lacked jurisdiction over the parties to vacate the Texas Judgment as the parties voluntarily appeared to initiate the proceeding here and seek vacation of the judgment's registration.

Hackney's motion to vacate purports to have been served upon Oakes and Muka on February 14, 1986. More importantly, Oakes responded to the motion by filing a motion to strike (DE 20), an opposition memorandum (DE 21), and an objection to an addendum to the motion to vacate (DE 27). In short, the 1986 Order was not rendered in a manner inconsistent with due process as Oakes had notice of the mtion to vacate and took advantage of several opportunities to be heard on the matter.

Next, Muka argues that Judge Kehoe lacked subject matter jurisdiction to vacate the registration of the Texas Judgment because a complaint was not filed nor was a "plenary actioin" commenced in connection with the registration of the Texas Judgment. The Court disagrees.

As the Sixth Circuit found in Ohio Hoist Manuf Co. v. LiRocchi, 490 F.2d 105, 108 (6th Cir.1974), a substantial federal question is presented, and thus federal jurisdiction exists, where a foreign judgment has been registered in violation of 28 U.S.C. Sec. 1963. See also Sephus v. Gozelski, 864 F.2d 1546 (11th Cir. 1989) (finding that the substantial federal

question presented in Ohio Hoist, i.e. the questionable validity of the registration of the foreign judgment, was not present). Muka cannot reasonably dispute that the 1986 Order merely vacated the registration of the Texas judgment based on its invalidity under Sec. 1963 and dismissed the action. See Ohio Hoist, 490 F.2d at 107 ("(I)t seems clear that the registering court has authority, necessarily implied from Sec. 1963 and as a matter of inherent jurisdiction, ... to grant relief ... by annulling or vacating the registered judgment..."). Consequently, subject matter jurisdiction existed to render the 1986 Order vacating the Texas Judgment's registration.

As Hackney argues and a careful review of the balance of Muka's opposition memorandum reveals, Muka actually seeks relief from the 1986 Order based on arguments that Judge Kehoe's decision to vacate the registration of the Texas Judgment was erroneous. However, it is well-settled that a mere error in the exercise of jurisdiction does not support relief under Rule 60(b)(4). See Chambers v. Armontrout, 16 F.2d 257,260 (8th Cir.1994)(rejecting

district court's failure to comply with an appellate mandate as a sufficient basis for rendering order void under Rule 60(b)(4)); Bloch Oldsmobile, 909 F.2d at 661-62 (explaining that relief under Rule 606(b)(4) requires a total want of jurisdiction in contrast to an error in the exercise of that jurisdiction); Gulf Coast Building & Supply Co. v. International Brotherhood of Elec. Workers, 460 F.2d 105, 108 (5th Cir. 1972)(noting than an error in law is insufficient to render a judgment void under Rule 60(b)(4). Thus, Muka has failed to demonstrate that she is entitled to relief from the 1986 Order pursuant to Rule 60(b)(4). (See footnote #5)

Footnote 5 - To the extent Muka contends that she is entitled to relief from that portion of the 1986 Order imposing attorney's fees and costs, the Court is unpersuaded that Judge Kehoe lacked inherent authority or authority under Fed. R. Civ. P. 16 to impose the monetary sanction. See Mroz v. Glatter, 65 F.3d 1567, 1575 (11th Cir. 1995)(noting that a court's inherent power may be

(continued at the top of the next page)

(Footnote 5 continued) invoked even if procedural rules exist which would authorize sanctioning the improper conduct). Moreover, Oakes also had notice of and an opportunity to be heard on the motion to vacate to the extent it sought attorney's fees. As discussed, to the extent Muka argues that the imposition of these sanctions was erroneous, this alone is insufficient to support relief under Rule 60(b)(4). (End of footnote 5)

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion to Vacate the May 27, 1986 Order is DENIED. It is further

ORDERED AND ADJUDGED that the Motion of Judgment Creditor Muka for the Court to Accept 10/18/2000 Counter-Reply Memorandum of Law on the Pendindg Motion to Vacate is DENIED for the reasons stated in Hackney's opposition memorandum.

DONE AND ORDERED in Chambers at Miami, Florida, this 30 day of November, 2000

URSULA UNDARO-BENAGES (signature)

UNITED STATES DISTRICT JUDGE

copies provided: Betty Muka, 113 Kay St., Ithaca, N. Y. 14850, Edwin G. Torres, Esq.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-10025-BB

BETTY O. MUKA,
Assignee of Judgment,
Judgment Creditor,
Plaintiff-Appellant,

v.

HORIZON FINANCIAL, S.A.,
Horizon Financial Corporation,
MICHAEL D. HACKNEY, Michael E. Hackney, as President and/or agent of Horizon Financial Corporation and as a private individual,
Defendant-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

(Opinion_, 11th Cir., 19__, ___ F.2d ____)

Before: EDMONDSON, WILSON and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requsted that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
/s/Peter T. Fay
UNITED STATES CIRCUIT JUDGE

Betty O. Muka
113 Kay Street
Ithaca, N. Y. 14850

October 02,2001

RE: 01-10025-BB
Herbert C. Oakes v. Horizon Financial
DC DKT NO.: 85-03361 CV-UUB
CC: Betty O. Muka
CC: Edwin G. Torres
CC: Gregory S. Grossman
CC: Administrative File

APPENDIX C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No: 85-3661-CIV-KEHOE

HERBERT C. OAKES,

Plaintiff,

v.

HORIZON FINANCIAL CORPORATION,

et al.,

Defendants.

_____/

ORDER GRANTING MOTION TO VACATE,

DISMISSING ACTION AND

AWARDING REASONBLE ATTORNEYS'FEES AND COSTS

THIS MATTER arose upon the Defendants' Motion to Vacate Registration of Judgment from Another District, to Quash Writ of Execution and Writ of Garnishment and to Stay Enforcement of Judgment. The Plaintiff, Herbert C. Oakes, instituted the present action in this Court by registering a judgment he had obtained against the Defendants in the Southern District of Texas. However, on February 13, 1986, that Court quashed the certification of judgment for registration in another district which it had previously issued. Accordingly, it is hereby

ORDERED AND ADJUDGED tht (sic) the Motion of the Defendants to Vacate Registration of Judgment from Another District, to Quash Writ of Execution and Writ of Garnishment and to Stay Enforcement of the Judgment is GRANTED, and this case is DISMISSED.

It is further

ORDERED AND ADJUDGED that the Defendants' request for recovery of costs and attorney's fees is GRANTED in light of the improper involvement of Betty Muka, an attorney suspended from the practice of law, in the pursuit of this lawsuit. See Local Rule 16. The Defendant shall submit an affidavit attesting to the reasonable attorneys' fees and costs it has incurred in defending this action within ten (10) days of the date of this order.

DONE AND ORDERED in Chambers at Miami, Florida this 27th day of May, 1986.

JAMES W. KEHOE (signed)
UNITED STATES DISTRICT JUDGE

copies furnished to:
Herbert Oakes
Robet (sic) H. Dillinger, Esq.

UNITED STATES CONSTITUTION

Art. I, Sec. 1 - "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Art. I, Sec. 8(18) - "The Congress shall have Power ... to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Art. II, Sec. 4 - "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Art. III, Sec. 1 - "The judicial Power of the United Statees, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of

UNITED STATES CONSTITUTION (CONTINUED)

Art. III, Sec. 1 (continued)

the supreme and inferior Courts, shall hold their offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office."

Art. III, Sec. 2(1) - "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and ..."

Art. III, Sec. 3(1) - "Treason against the United States, shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. ..."

Art. III, Sec. 3(2) - "The Congress shall have power to declare the PUnishment of Treason ...

Art. IV, Sec. 2(1) - "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several

UNITED STATES CONSTITUTION (CONTINUED)

Art. IV, Sec. 2(1) (continued)

States."

Art. VI, Sec. 2 - "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Art. VI, Sec. 3 - "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ..."

UNITED STATES STATUTES, TITLE 28 U.S.C.

Sec. 451 - "...The term 'judge of the United States' includes judges of the courts of appeals, dis trict courts, Court of International Trade and any court

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 451 (continued)

created by Act of Congress, the judges of which are entitled to hold office during good behavior." ... The term "justice of the United States" includes the Chief Justice of the United States and the associate justices of the Supreme Court.

Sec. 453 - "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and doequal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

Sec. 1254 - Cases in the courts sof appeals may be reviewed by the Supreme Court by the followoing methods: (1) by writ of certiorari granted upon the petition of any party any civil or criminal case, before or

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 1254 (continued)

after rendition of judgment or decree; ...

Sec. 1331 - "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Sec. 1332 - "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between (1) citizens of different States; ..."

Sec. 1343 - "(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2) ...."

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED)

Sec. 1654 - In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

Sec. 1918 - "(a) Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for. ..."

Sec. 1920 - "A judge or clerk of any court of the United States may tax as costs the following: (1) ..." (attorney's fees are not included)

Sec. 1927 - "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatioiusly may be required by the court to satisfy personally

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 1927 (continued)

the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct."

Sec. 1962 - "Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such state, and shall cease to be a lien in the same manner and time. ... Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State."

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 1962 (continued)

Sec. 1963 - "A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. ... A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner. ... The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments."

Sec. 2072 - "(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 2072 (continued)

distric courts (including proceedings before magistrates thereof) and courts of appeals. (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. ..."

Sec. 2106 - "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or other, or require such further proceedings to be had as may be just under the circumstances."

Sec. 2403(a) - "In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is

UNITED STATES STATUTES, TITLE 28 U.S.C. (CONTINUED), Sec. 2403(a) (continued)

drawn in question, the court shall certify such fact to the Attorney General and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissable in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

FEDERAL RULES OF CIVIL PROCEDURE: RULES

1 - "These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

FEDERAL RULES OF CIVIL PROCEDURE: RULES (CONTINUED)

2 - "There shall be one form of action to be known as 'civil action'."

3 - "A civil action is commenced by filing a complaint with the court."

4 - "... (b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons in proper form, t he clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. ... (c)(1) A summons shall be served together with a copy of the complaint. ... (2) Service may be effected by any person who is not a party and who is at least 18 years of age. ..."

4.1 - "(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1).

FEDERAL RULES OF CIVIL PROCEDURE: RULES
(Rule 4.1 CONTINUED)

The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state."

5 - "(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court othewise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. ... (b) ... Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or

FEDERAL RULES OF CIVIL PROCEDURE: RULES
(Rule 5(b) CONTINUED)

party's last known address ... (d) Filing; Certificate of Service. All papers after the complalinat required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service ..."

6 - "... (d) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing ..."

7 - "(a) Pleadings. There shall be a complaint and an answer ... (b)(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

FEDERAL RULES OF CIVIL PROCEDURE: RULES (CONTINUED)

8 - (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. ..."

9 - Pleading special Matters. " ... (b) In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. ..."

10 - "Caption; Names of Parties. Every pleading shall contain a caption, setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the

FEDERAL RULES OF CIVIL PROCEDURE: RULES
(Rule 10 CONTINUED)

complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with ann appropriate indication of other parties. ..."

11 - "... (b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information , and belief, formed after an inquiry reasonable under the circumstances, - (1) it is not being presented for any improper purpose, such as to harass or to cause uncecessary delay or needless increase in the cost of litigation; ... (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may subject to the conditions stated below, impose an appropriate sanction upon

FEDERAL RULES OF CIVIL PROCEDURE: RULES
(Rule 11 CONTINUED)

the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. (1) How Initiated. (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, cliaim, defense, contention, allegations, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees. ..."

FEDERAL RULES OF CIVIL PROCEDURE: RULES (CONTINUED)

12 - Defenses and Objections - When and How Presented - By Pleading or Motion ..." (a) When Presented. (1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer (A) within 20 days after being served with the summons and complaint ...(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses day at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. ..."

FEDERAL RULES OF CIVIL PROCEDURE: RULES (CONTINUED)

16 - Pretrial Conferences: Scheduling; Management. "(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial ... (f) Sanctions. If a party or a party's attorney fails to obey a scheduling or pretrial order, or if no appeaance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's aattorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 27(b)(20(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party orboth to pay the reasonable expenses incurred

FEDERAL RULES OF CIVIL PROCEDURE: RULES (RULE 16 CONTINUED)

because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust."

54 - Judgments; Costs. "(a) Definition; Form. 'Judgment' as used in these rules includes a decree and any order from which an appeal lies. ... (d) Costs: Attorney's Fees. Except when express provision therefore is made either in a statute of the United States or in these rules, costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs; ... (2) Attorney's Fees. (A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial. (B) Unless otherwise provided by statute or order of the court, the motion must be filed and

FEDERAL RULES OF CIVIL PROCEDURE: RULES (RULE 54 CONTINUED)

served no later than 14 days after entry of judgment, must specify the judgment and the statute , rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. ... (C) On request of a party or class member, the court, shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a judgment shall be set forth in a separate document as provided in Rule 58."

58 - Entry of Judgment. "Subject to the provisions of Rule 54(b); (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that

FEDERAL RULES OF CIVIL PROCEDURE: RULES (RULE 58 CONTINUED)

all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). ..."

59 - New Trials ... "...(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment. ..."

60 - Relief from Judgment or Order. "...(b) On motion and upon such terms as are just, the court may relieve a party or a pary's legal representative from a final judgment, order, or proceeding for the following

FEDERAL RULES OF CIVIL PROCEDURE: RULES (RULE 60 CONTINUED)

reasons: .....(4) the judgment is void;... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28 U.S.C. Sec. 1655, or to set aside a judgment for fraud upon the court. ..."

62 - Stay of Proceedings to Enforce a Judgment. "(a) Automatic Stay; Exceptions - Injunctions, ... Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. ... (d) Stay Upon Appeal. When an appeal is taken the

FEDERAL RULES OF CIVIL PROCEDURE: RULES (RULE 62 CONTINUED)

appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court. ... (g) Power of Appellate Court Not Limited. The provisions in t his rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendencey of an appeal or to suspend, modify, restore, or grant an injunction during the pendence of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered."

65 - Injunctions "(a) Preliminary Injunction. (1) Notice. No preliminary injunction shall be issued without notice

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(RULE 65 CONTINUED)

to the adverse party. (2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. ... (c) Security. No restraining order or preliminary injunction shall issue except upon t he giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

69 - Execution. "(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice

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and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held. ..."

79 - Books and Records Kept by the Clerk and Entries Therein. "(a) Civil Docket. The clerk shall keep a book known as 'civil docket' of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the judicial Conference of the United States., and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers.

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... (b) Civil Judgments and Orders. The clerk shall keep, ... a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept. ..."

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4 - Appeal as of Right - When Taken. "(a) Appeal in a Civil Case. (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from ... (4) If any party files a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision

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applies to a timely motion under the Federal Rules of Civil Procedure: ...(E) for a new trial under Rule 59 ..."

Rule 8 - "Stay or Injunction Pending Appeal. (a) Stay Must Ordinarily Be sought in the First Instance in District Court; Motion for Stay in Court of Appeals. Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendence of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for t he relief sought is not practicable, or that the district court has denied an application, or has failed to afford the rel ief which the applicant requested, with the reasons given by the district court for its action. ... (b) Stay May Be

FEDERAL RULES OF APPELLATE PROCEDURE: RULES (RULE 8 CONTINUED)

Conditioned Upon Giving of Bond ... Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the district court. ..."